IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1367 of 1983

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes

2. To be referred to the Reporter or not? no

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3. Whether Their Lordships wish to see the fair copy of the judgement? no

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? no

5. Whether it is to be circulated to the Civil Judge?

Registrar to act vide pages 6 & 7.

NAVYUG CO-OP HOUSING

Versus

STATE OF BANK OF INDIA

Appearance:

MR NS DESAI for Petitioner

MR BN DOCTOR for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 2, 3

CORAM : THE CHIEF JUSTICE G.D.KAMAT

Date of decision: 02/08/96

ORAL JUDGEMENT

The petitioner is a co-operative housing society, registered under the Gujarat Co-operative Societies Act, which had instituted H.R.P.Suit No. 5062 of 1971 against the first respondent, a co-operative housing society of

the employees of the State Bank of India, for recovery of Rs.24,949.68 ps. as arrears of rent and expenditure incurred in respect of repairs to water tank, pump, electric motor, etc. It is a common ground that the petitioner is occupant of a piece of land and part of which had been let out to the first respondent-society of the employees of the State Bank, and the claim in the suit was made towards recovery of arrears of rent. The suit was decreed on 2nd September 1992. Darkhast proceedings, bearing No.750 of 1982, were launched against the first respondent society. At the relevant point of time, respondent No.2 was the Chairman and respondent No.3 was the Secretary of the Managing Committee of the Society. As decree-holder, the petitioner obtained a Jungam Warrant, which was sought to be executed by a Baliff. In the process, it appears that some personal belongings of respondent No.2 were sought to be attached, at which stage, respondent No.2 had handed over a cheque for decretal amount of Rs.32,277.20 ps, which, needless to say, the Baliff deposited in the executing court. After some time, respondent No.2 moved an application (Exh.15) dated 2nd May 1983 before the executing court for return of the cheque on the ground that he was prepared to pay the decretal amount in cash. It is the common ground that the executing court considered the request, returned the cheque to respondent No.2 and accepted the decretal amount in cash, which was duly deposited in the court.

By application dated 5th May 1983 (Exh.17), the petitioner-decree holder prayed for return of the money deposited by respondent No.2 in satisfaction of the decree. Both these applications Exh.15 and Exh.17 were heard together and, under the common order dated 6th May 1983, the executing court rejected the request of respondent No.2 denying return of money to him, and, at the same time, did not also grant the prayer contained in application (Exh.17) made by the petitioner-decree holder on the specious ground that some investigation is required to be made in respect of the grievances and the averments made by respondent No.2 in his application dated 2nd May 1983.

It is the case of respondent No.2 that, when his moveable property was sought to be attached by the Baliff, with a view to stall the same, he borrowed a cheque from one of his neighbours, by name N.R. Shah, who is otherwise a member of the same society, and handed over the same to the Baliff. It is also his case that, for the purpose of depositing the amount in the court in cash on 15th April 1983, he had borrowed the amount from

another member of the society by name A.V. Shah. The basis of his claiming back the said amount from the court vide application (Exh.15) was that he was not responsible to pay the decretal amount, as the decree was against the society and not personally against him. When the executing court held that investigation was required to consider the return of money in favour of the petitioner-decree holder, it is the case of respondent No.2 that he had deposited money, which otherwise he was not supposed to, as the decree was not personally against him.

The petitioner-decree holder has landed in this Court in the present revision application against the part of the order dated 6th May 1983, which denied the payment of money deposited by respondent No.2 on 15th April 1983. I have found that there is enough merit in the present revision application. It is difficult to accept the contention of Mr. Doctor, learned counsel appearing for respondent No.2, that respondent No.2 is entitled to money which he was perforced to deposit on 15th April 1983. In this connection, it was submitted by Mr. Doctor that the Court ought to understand the background under which respondent No.2 had at first deposited a cheque and, thereafter, cash amount on 15th April 1983. According to him, certain moveable items personally belonging to respondent No.2 were attached, and it is on this circumstance that he was perforced to deposit the money and that too, by borrowing from his neighbour-friend. Mr. Doctor has further pointed out that, even when he tendered the cheque to the Baliff, it is recorded in the Baliff's report that the payment is under protest and whatever payment made was under objection that respondent No.2 could not be made liable to pay the amount under the decree, which was made directly against respondent No.1-society.

It is pertinent to note that at the relevant time respondent No.2 was the Chairman of the first respondent society. Though the decree was made against the society, the fact remains that as an office bearer, respondent No.2 paid the decretal amount in cash on 15th April 1983 in the court. In my opinion, once the amount is deposited in the court, no matter the source of it, the said amount must be adjusted towards satisfaction of the decree. It is inconceivable that respondent No.2 can be heard to say that he had borrowed money from his friend or that he was compelled to deposit money merely because his furniture items were sought to be attached pursuant to the Jungum Warrant.

The second aspect of the matter is that money has no earmark. Once the money is deposited towards satisfaction of the decree, it is needless to say that the court has to appropriate the same towards satisfaction of the decree and, if there is any claim by such a person, who has deposited money, he can prosecute the same as against the person who was otherwise supposed to satisfy the decree.

In this view of the matter, the civil revision application succeeds and part of the impugned order dated 6th May 1983, passed below application (Exh.17), disallowing the application of the petitioner-decree holder, is quashed and set aside, and the application (Exh.17) is allowed with the result that the petitioner-decree holder is entitled to sum of Rs.32,773.78, which is lying in deposit.

Since respondent No.2 has averred that whatever money deposited on 15th April 1983 is belonging to him and the decree is against the society, needless to say, it is open to him to recover the said amount from the society in accordance with law.

Rule is accordingly made absolute with no order as to costs.

Before I part with this judgment, it has become necessary for me to observe the unhappy state of affairs existing in the trial courts. The amount of Rs.32,773.78 ps was deposited by respondent No.2 on 15th April 1983. The trial court by the impugned order dated 6th May 1983 declined to return money to respondent No.2 on rejecting his application and, at the same time, did not permit the petitioner-decree holder to recover the same. The trial court was, therefore, aware that investigation, that it directed, would take quite some time. However, the trial court did not make any order for deposit of the amount in a fixed deposit in a nationalised Bank.

This revision application was instituted sometime in early 1983 and it is disposed off after 13 years. Had this money been deposited in the fixed deposit account, by now, the amount would have quadruplicated, as it is common ground that any amount deposited in the Bank doubles within a period of six years. Having regard to this state of affairs, in my opinion, a direction should go to all the courts below that whatever money lying in deposit with the court must be invested in a nationalised Bank for a definite period depending upon facts of each case, so that money in deposit earns interest and that

way the parties finally stand to benefit by such investment. There are several schemes in Banks in relation to fixed deposit including reinvestment scheme. The Registrar is, accordingly directed to issue necessary circular to the trial courts in this behalf.

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(swamy)